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8 NOT FOR CITATION

9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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12 SONNY RAY HARDAWAY, ) No. C 08-4322 JF (PR)  
13 Plaintiff, )  
14 vs. ) ORDER OF DISMISSAL  
15 ) WITHOUT PREJUDICE  
16 COUNTY OF ALAMEDA, et al., )  
17 Defendants. )  
18

19 Plaintiff, a California prisoner proceeding pro se, filed the instant civil rights  
20 action pursuant to 42 U.S.C. § 1983. He claims that Defendants have conspired to  
21 discriminate against him by arresting, convicting and imprisoning him based on his race.  
22 He seeks money damages. The complaint is DISMISSED without prejudice under Heck  
23 v. Humphrey, 512 U.S. 477 (1994).

24 **DISCUSSION**

25 A federal court must conduct a preliminary screening in any case in which a  
26 prisoner seeks redress from a governmental entity or officer or employee of a  
27 governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify  
28 any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a

1 claim upon which relief may be granted or seek monetary relief from a defendant who is  
 2 immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be  
 3 liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
 4 1988). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
 5 elements: (1) that a right secured by the Constitution or laws of the United States was  
 6 violated, and (2) that the alleged violation was committed by a person acting under the  
 7 color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

8 Plaintiff alleges that he has been wrongfully arrested, convicted and imprisoned on  
 9 multiple occasions since 1982. He sues the arresting officer, the Internal Affairs  
 10 Department of the Oakland Police Department, the City of Oakland, and the County of  
 11 Alameda. He seeks money damages.

12 In order to recover damages for allegedly unconstitutional conviction or  
 13 imprisonment, or for other harm caused by actions whose unlawfulness would render a  
 14 conviction or sentence invalid, a 42 U.S.C. § 1983 plaintiff must prove that the conviction  
 15 or sentence has been reversed on direct appeal, expunged by executive order, declared  
 16 invalid by a state tribunal authorized to make such determination, or called into question  
 17 by a federal court's issuance of a writ of habeas corpus. Heck v. Humphrey, 512 U.S.  
 18 477, 486-487 (1994). A claim for damages bearing that relationship to a conviction or  
 19 sentence that has not been so invalidated is not cognizable under § 1983. Id. at 487.

20 When a state prisoner seeks damages in a § 1983 suit, the district court must  
 21 therefore consider whether a judgment in favor of the plaintiff would necessarily imply  
 22 the invalidity of his conviction or sentence; if it would, the complaint must be dismissed  
 23 unless the plaintiff can demonstrate that the conviction or sentence has already been  
 24 invalidated. Id. at 487. Heck makes it clear that a § 1983 "cause of action for damages  
 25 attributable to an unconstitutional conviction or sentence does not accrue until the  
 26 conviction or sentence has been invalidated." Id. at 489-90 (footnote omitted). In  
 27 addition, a challenge to the denial of parole, whether based upon procedural defects in the  
 28 parole hearing or upon allegations that parole was improperly denied on the merits,

1 directly implicates the validity of the prisoner's continued confinement. See Butterfield v.  
2 Bail, 120 F.3d 1023, 1024 (9th Cir. 1997). Therefore, a claim for damages based on the  
3 improper denial of parole is barred by Heck. See id.

4 Here, plaintiff's claims that he has been wrongfully arrested, convicted and  
5 sentenced to prison based on his race would, if successful, necessarily imply the  
6 invalidity of his state court convictions. As such, plaintiff's claim is barred by Heck, and  
7 is DISMISSED without prejudice to Plaintiff's filing a new complaint if the challenged  
8 conviction, sentence and/or parole denial are later invalidated. See Trimble v. City of  
9 Santa Rosa, 49 F.3d 583, 585 (9th Cir. 1995) (claim barred by Heck may be dismissed  
10 sua sponte without prejudice under 28 U.S.C. § 1915).

11 **CONCLUSION**

12 Plaintiff's complaint is hereby DISMISSED without prejudice.

13 The Clerk shall terminate all pending motions, close the file and enter judgment.

14 IT IS SO ORDERED.

15 DATED: 11/17/08



JEREMY FOGEL  
United States District Judge